

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 2732 of 2005

Jai Shreeji Vihar Coop.)
Society Ltd., a society duly)
registered under Maharashtra)
Cooperative Societies Act, 1960)
through its Secretary Mr. Mahesh)
M. Gadhia, aged 38 years, Occ:)
business, having office at Jai)
Shreeji Vihar, S.V. Road, Opp:)
Kandivli Telephone Exchange)
Kandivli (West), Mumbai 400067) ..Petitioners
vs.

1. The Municipal Corporation of)
Greater Mumbai, a Corporation)
established under the B.M.C.)
Act, 1888 having its office)
at Mahapalika Marg, Mumbai)
400 001)
2. The Assessor and Collector)
R/South Ward, M.G. Road,)
Kandivli (West), Mumbai 400067)
3. M/s Dattani Developments, a)
Builders & Developments, a)
partnership firm, duly)
registered under Indian)
Partnership Act, 1932 and)
having its office at 100,)
Shriji Darshan, S.V. Road,)
Kandivli (West), Mumbai 400067) ..Respondents

Shri J.G.Damani for petitioner
Smt.A.K.Savla for respondent nos.1 and 2
Shri K.K.Kakkara i/b M/s Aarkey Legal for respondent no.3

Judgment Reserved on 9.4.2007
Judgment delivered on 19.4.2007

**CORAM: SWATANTER KUMAR C.J.
& S.C.DHARMADHIKARI J.
19th April, 2007**

J U D G M E N T (Per S.C.DHARMADHIKARI J.)

1. By this petition under Article 226 of the Constitution of India, the petitioners are challenging the Demand and Auction notices issued by respondent nos. 1 and 2 and action initiated in pursuance thereof, namely, disconnecting water supply to the petitioners' building, details of which are set out in prayer clause (a) of the petition.

2. It is the grievance of the petitioners that before demanding a huge sum of Rs.22,64,583/- and taking the aforesaid action no hearing was given to them. Accordingly, the notices and auction in pursuance thereof be quashed and set aside and the matter be remitted to respondent no.2 for decision afresh.

3. We have heard Shri Damani appearing for the petitioners, Smt.A.K.Savla for respondent nos.1 and 2 and Shri Kakkara for respondent no.3 developers.

4. It is not in dispute that the residential building consisting of stilt plus 5 upper floors was constructed by respondent no.3. The said building has 16 flats and the same have been sold on ownership basis to various flat purchasers. It is pointed out to us that the Corporation did not grant the "Building Completion Certificate" but conditional occupation certificate came to be granted on 24th July, 1997. It is also undisputed that the building "Jai Shreeji Vihar" has been assessed for payment of property taxes as new construction with effect from 26th November, 1997. The Rateable Value has been determined at Rs.4,99,655/-

5. The petitioners state that the flat purchasers have formed a cooperative housing society. They had paid the entire consideration in respect of the flats in their occupation to respondent no.3. This consideration includes the amount of municipal taxes and other charges. The amounts have been paid, according to them, before taking possession of the respective flats. It is their case that respondent no.3 has confirmed that a sum of Rs.13,79,346.50 has been received from time to time by respondent no.3 between 1998 till September, 2002.

6. It is in these circumstances that the petitioners allege that they were surprised to receive a notice of attachment of the property ("building") from respondent nos. 1 and 2. The demand for Rs.12,39,386 is on the basis that the property taxes have been in arrears from 1998-2000. The penalty was also demanded. The demand then increased to Rs.13,39,998/- It is the case of the petitioners that after receipt of these notices they approached respondent nos. 1 and 2 and paid a sum of Rs.3,00,000/- in order to avoid disconnection of water supply and/or auction of their property. According to the petitioners, despite such payments, respondent nos. 1 and 2 continued demanding diverse amounts allegedly as arrears of property taxes and reference is made to the bills and demand notices. The petitioners state that they have in all made payment of Rs.11,00,000/- but by further notice respondent nos.1 and 2 threatened that the water supply would be discontinued in case the amounts as demanded by them are not paid. The petitioners have made reference to the correspondence so also contended that no notice under section 162 of the B.M.C.Act, 1888 has ever been served and, therefore, action of respondent nos. 1 and 2 in demanding the same and threatening coercive action is arbitrary, high-handed and illegal. According to the petitioners there is no power in law to initiate such

drastic measures.

7. Shri Damani appearing for the petitioners has invited our attention to the averments in the petition and has contended that a reasonable and just request of the flat purchasers to furnish flatwise details of the property tax has not been accepted. Further, due credit for payment has not been given. The petitioners have not been given any opportunity to make good their case. The demand went on increasing and, as referred to in the petition, a sum of Rs.16,28,426/- was demanded during the course of the proceedings before the Assessment Officer. In these circumstances, the demand of Rs.22,64,583/- cannot be sustained and deserves to be set aside.

8. This petition was placed before a Division Bench of this Court from time to time. On 22nd August, 2005, after the matter was heard for some time, a Division Bench of this Court was pleased to direct that notice be issued to the respondents to show cause as to why the petition should not be admitted but at the same time directed the petitioners to pay Rs.10 lakhs in two instalments. All details including the date on which the instalments would be due are stipulated in the order passed on that date.

9. When this matter was placed before another Division Bench of this Court, to which one of us (S.C.Dharmadhikari J.) was a party, the complaint of the petitioners' Advocate that respondent no.3 Developers have cheated them despite collecting huge sums from the flat purchasers has been duly noted. It was clearly observed that inter se dispute between the society and developer cannot be a justification for non payment of municipal taxes. This Court in para 2 of the order observed thus:

"2. Though it is an inter se dispute between the petitioner society and respondent no.3 builder, this cannot be a justification for non payment of municipal taxes to respondent nos. 1 and 2. Further, what we find is that the society has not been diligent in prosecuting the matter till it came to the stage of auctioning the property of the society by respondent nos. 1 and 2 to recover their dues with penalty. This Court by an interim order has directed the respondent nos. 1 and 2 to stop the project of the respondent no.3 which is being carried on in the near vicinity. The learned Counsel for the respondent no.3 submits that he will work out the details with the petitioners and if anything is due and payable by respondent no..3

would advise his client to make payment of the municipal dues in proportion to his liability./ We grant two weeks time to the petitioners and respondent no.3 to settle their inter se dispute otherwise this Court would dispose of this petition after hearing the learned Counsel for the parties. Needless to say that the Corporation has a right to recover their dues even from respondent no.3 if it is found to be so by attaching their other properties. In the mean time the interim order would continue to operate."

10. After observing as above, this Court directed that the developers should file an affidavit with advance copy to the petitioners' Advocate and Municipal Corporation. The Division Bench recorded the statement of the petitioners' Advocate that the society would deposit all arrears including current bills before the next date. It is on this basis that the interim order was continued.

11. On 6th March, 2007, this Court directed the Municipal Corporation to file affidavit setting out the details of the amount due and payable by the petitioner society after giving due credit for the earlier payments. On 13th March, 2007 this Court took on record the statement in

tabular form furnished by the Corporation in which the dues of the petitioners society have been duly reflected. The petitioners' Advocate requested for time to verify the same and that is how the matter was adjourned.

12. Before us the petitioners' Advocate once again reiterated the contentions noted above and invited our attention to the affidavit filed by the petitioners society on 30th March, 2007. The learned Advocate contended that the society has already paid a sum of Rs.21,00,000/- and, therefore, there is no question of making any further payment.

13. After perusal of the petition and annexures thereto, so also the affidavits of the Respondents we have no reason to doubt the correctness of the figure computed by the Corporation as arrears of property taxes. The statement annexed to the affidavit of respondent no.2 filed in this Court on 13th March, 2007 shows that a sum of Rs.20,45,490/- is due and payable as on the date of the statement i.e. 7th March, 2007. This computation is made by the Corporation after giving due credit for the earlier payments. Thus, the statement as prepared from the municipal record including the Assessment Registers and Book will have to be accepted in preference to the oral

statement of the petitioners' Counsel. Apart from the payment made in pursuance of the earlier order of as directed by this Court, the petitioners have been unable to point out as to how dues of the Corporation have been cleared in full. If the entire payment towards the property taxes has been made, then there was no occasion for the petitioners to raise any dispute with the builder and urge that the developers had collected huge amount but had not forwarded the same to the Corporation. Even this assertion is denied by the Respondent No.3 Developer. As rightly observed in the earlier order, inter se dispute between the parties such as society and builders/devel'opers cannot prevent the Corporation from levying, Assessing and collecting Property Taxes in accordance with law. Precisely, this has been done by the Corporation. If the petitioners had any grievance with regard to the assessment and valuation of Property tax, they always had a remedy available to them in law. Bombay Municipal Corporation Act, 1888 provides for an Appeal against Taxes determined, fixed and charged to the Chief Judge of Court of Small Causes at Bombay. The petitioners have not availed of the said remedy and have instituted the present petition with a view to obstruct the collection and recovery of taxes by the Corporation. The Corporation would not have resorted to coercive means had

the payment been made.

14. In the above facts and circumstances, we are of the opinion that no case is made out for interference in our Extra-ordinary, Equitable and Discretionary jurisdiction under Article 226 of the Constitution of India. The petition is, therefore, dismissed. With a view to grant last opportunity to the petitioner society we continue the interim order restraining the Corporation from disconnecting the water supply for a further period of six weeks to enable the petitioners to clear the dues as demanded vide statement annexed to the affidavit filed by respondent no.2 in this Court on 13th March, 2007. Needless to state that the petitioners would be obliged to pay the current taxes as well. Further, needless to state that if within this period the amounts are not paid the interim order will stand automatically vacated after six weeks without any further reference to this Court. However, this order does not prevent the petitioner-society from initiating such proceedings as are permissible in law against Respondent no.3 Developer and they shall be dealt with on their own merits and in accordance with law. We leave the parties to bear their own costs.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)